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Attorney for Roy E. Alexander and Rufo T. Mafnas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN S. PANGELINAN,

Plaintiff,

vs.

DAVID A. WISEMAN, et al.,

Defendants.

ANGELITO TRINIDAD, RONNIE PALOMO, HERMAN TEJADA, ESPERANZA DAVID, ANTONIO ALOVERA , and UNITED STATES OF AMERICA,

Respondents.

Case No. CV 08-0004

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY ROY ALEXANDER AND RUFO T. MAFNAS PURSUANT TO RULE 12(b)(6)

Date: APR 17 2008
Time: 9:00 a.m.
Judge:

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INTRODUCTION

The Complaint in the above matter must be dismissed. John S. Pangelinan comes before the court again, this time seeking to recover more than $50 million dollars from Roy E. Alexander and Rufo T. Mafnas in connection with the execution of a court order directing the sale of

Pangelinan's Papago Property.[1/] In the latest chapter of his petulant and quixotic saga, Pangelinan points to his indictment, arrest, prosecution, conviction and imprisonment for a June 1, 2006 letter to the editor (the "June 1 Letter") that he sent to both local papers and delivered to Alexander, the publication of which he claims was absolutely protected by the First Amendment. (*See* Compl. at 11.)

This Complaint names Rufo T. Mafnas, the purchaser of the Papago Property, as a defendant simply because he was the successful bidder at the court-approved and ordered execution sale. Alexander joins the defendants, according to Pangelinan, chiefly because he engineered the sale of the property. In addition to judges and court personnel, the Complaint also targets attorneys Robert T. Torres and Lillian A. Tenorio for their roles in enforcing and obtaining satisfaction of the Underlying Judgment. Last but not least, Pangelinan names former employees Angelito Trinidad, Ronnie Palermo, Herman Tejada, Esperanza David, and Antonio Alovera simply because they prevailed in their claims to collect unpaid wages in Civil Action 97-0073.

In all this Pangelinan ignores one fundamental fact: the genesis of the original case; his conviction; and the sale of his property was occasioned by none other than himself in failing to pay wages due to his employees.

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[1] *See Trinidad v. Pangelinan*, No. CV-97-00073-ARM (March 20, 2000) (the "Underlying Judgment").

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The Claims Against Alexander

Plaintiff implicates Roy E. Alexander in this dispute as a "federal court agent" who conducted the judicial sale of certain property located in Papago (the "Papago Property") pursuant to court order, so as to satisfy the Underlying Judgment. (*See* Compl. ¶ 5.) In addition to presiding over what Pangelinan characterizes as a void sale, Plaintiff contends that Alexander filed a negative statement about Pangelinan when he showed up at Alexander's office to deliver his June 1 missive. (*See* Compl. ¶ 7.) As a result of the Letter, Alexander testified against Pangelinan at a hearing for a temporary restraining order and at his criminal trial for obstruction. (*See* Compl. ¶ 13.) Finally, Pangelinan claims that Alexander improperly conducted the sale of the Papago Property at a place not authorized by statute, for executing a deed to the Papago land, and for delivering the deed to Mafnas, the purchaser. (*See* Compl. ¶ 19.)

On these facts alone, Plaintiff asserts that Alexander, as a state witness, collaborated with the Federal Defendants to indict, arrest, prosecute, convict and imprison him in retaliation for the June 1 Letter and for exercising his right of free speech. (*See* Compl. at 11.) Pangelinan then argues that Alexander is somehow liable for retaliatory denial of due process in connection with the allegedly unlawful and retaliatory taking of the Papago land. According to Pangelinan, because the judicial sale was held at a place not designated by the

applicable federal statute and because the Underlying Judgment was void, the taking and delivery of his property were likewise void and violated his right to due process of law. (*See* Compl. at 12.)

The Claims Against Rufo Mafnas

Pangelinan names Rufo Mafnas in this Complaint as a collaborator of state actors Torres and Tenorio. (*See* Compl. at 3.) Pangelinan does not name Mafnas as an actor in the claim for Retaliatory Criminal Prosecution. Nor does Pangelinan bother to name Mafnas in his claim for Retaliatory Denial of Due Process. According to Pangelinan, Mafnas must be culpable for something since he purchased the Papago Property.

For the reasons set forth below, however, neither Mr. Alexander nor Mr. Mafnas are liable to Pangelinan for anything, since as a matter of law, Pangelinan fails to state a claim against them. Because Alexander is further protected from suit by immunity, all claims against him fail.

FACTS

1. On June 5, 2000, the district court issued Amended Findings of Fact and Conclusions of Law finding Pangelinan liable to the Trinidad Plaintiffs for RICO violations, mail and wire fraud, and common law fraud. (Compl. ¶ 25.)

2. To satisfy the judgment, certain properties belonging to John and Merced Pangelinan were auctioned and sold to the Trinidad Plaintiffs, as

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judgment creditors. (Compl. ¶ 4.)

3. John Pangelinan filed several appeals to contest the Underlying Judgment.[2/] The Ninth Circuit Court of Appeals affirmed the district court's rulings and affirmed the sale of these properties on March 19, 2002. *See Trinidad v. Pangelinan*, 32 Fed.Appx. 357, 2002 WL 461731 ((9th Cir. 2002).[3/]

4. On April 21, 2001, Pangelinan filed a Rule 60(b)(4) motion to vacate or annul the Underlying Judgment, arguing that the district court lacked jurisdiction over him as well as the subject matter. (*See* Compl. ¶ 3.) On January 15, 2003, the Ninth Circuit issued its memorandum decision in No. 02-16013, affirming the district court's judgment denying the Rule 60(b)(4) motion to void the judgment. *See Trinidad v. Pangelinan*, 54 Fed.Appx. 470, 2003 WL 124471 (9th Cir.), *cert. denied*, 538 U.S. 1064, 123 S.Ct. 2232, 155

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[2] In consolidated Appeal Nos. 00-15697 and 00-15705, John and Merced Pangelinan appealed the judgment. In the companion Appeal No. 00-16630, the Pangelinans appealed the district court's order issuing writs of attachment and execution and levy on their bank account to satisfy the judgment. In companion appeal No. 01-16622, the Pangelinans appealed the sale of their real property to satisfy the Underlying Judgment and the entry of a preliminary injunction preventing them from interfering with the lessee of one of the properties subject to the writ of attachment. Each of the district court's rulings were upheld. 32 Fed. Appx. 357, 2002 WL 461731 (9th Cir. Mar. 15, 2002). Mr. Pangelinan, however, never missed any additional opportunity to raise his objection to jurisdiction. *See* Objection to Plaintiffs' Motion to Compel Attendance at a Deposition and for Sanctions and Pangelinans' Motion to Dismiss for Court's Lack of Article III Subject Matter Jurisdiction (Mar. 10, 2004) (No. 396-1).

[3] Appeal No. 00-15697 was a consolidated appeal that included Appeal Nos. 00-15706, 00-16630, and 01-16622. See 32 Fed. Appx. 357, 2002 WL 461731 (9th Cir. March 15, 2002).

L.Ed.2d 1119 (2003).[4]

5. Pangelinan's objections to the Judgment and his defiance of this court's rulings brought him civil and criminal sanctions. In July of 2000, the Trinidad Plaintiffs obtained the first of several restraining orders to restrain John and Merced Pangelinan from interfering with the execution of the Underlying Judgment. *See, e.g.*, Record of Proceedings at 22, (No. 305-1) ("Record"); Order Granting Preliminary Injunction (No. 315-1).

6. When Pangelinan refused to satisfy the judgment voluntarily, Mr. Torres, on behalf of the Trinidad Plaintiffs, levied execution enabling them to purchase four parcels of the Pangelinans' land (the "Garapan Property") for $201,000. Because the proceeds of the sale of the Garapan Property were insufficient to satisfy the judgment, a deficiency remained that continued to accrue interest from July 1, 2001.

7. In an effort to collect the deficiency, the Trinidad Plaintiffs attempted to depose Pangelinan to determine whether there were any additional assets available to satisfy the balance. Not only did Pangelinan refuse to cooperate and fail to appear when noticed, but when he did show up at deposition, he refused to disclose information about his financial status and take the oath required by Rule 30(b)(4). For this, the district court ultimately

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[4] Even though the Court of Appeals closed the file, Pangelinan attempted to appeal this ruling on May 3, 2002. *See* Record (No. 344-1).

found Pangelinan in contempt. *See* Order Finding Defendant John S. Pangelinan in Contempt of Court (April 30, 2004) (No. 430).

8. The Trinidad Plaintiffs, through the efforts of attorney Torres, "finally" obtained a title report revealing that Pangelinan owned all right, title and interest in certain property in Papago (Lot E.A. 222 or the "Papago Property"). (Compl. ¶ 30.) Thus, when the Trinidad Plaintiffs applied for a writ of execution to levy on E.A. 222, the court issued a writ in January of 2006, authorizing the property to be sold at judicial sale. *See* Amended Order Granting Writ of Execution (Mar. 8, 2006) (No. 502).

9. Pangelinan opposed the writ and proposed to substitute two other parcels of property.[5/] After carefully considering and rejecting each of Pangelinan's arguments, the court authorized and directed Roy E. Alexander to levy execution upon Lot. No. E.A. 222 in order to satisfy the balance of the Underlying Judgment. *See* Order Authorizing Roy Alexander to Levy Execution (Feb. 23, 2006)(No. 492); Order Granting Writ of Execution (Jan. 27, 2006) (No. 485); Amended Order Granting Writ of Execution (Mar. 22, 2006) (No. 502).

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[5] Pangelinan contended that because the CNMI had no statute designating anyone to issue a writ of execution, it was incumbent upon the Trinidad Plaintiffs, as judgment creditors, to obtain a praecipe from the clerk of the court. *See* Objection to Plaintiffs' Motion for Writ of Execution and Sale of Real Property (January 17, 2006) (Nos. 477-478). The Pangelinans further contended that they were using the Papago Property as their residence, and thus it was exempt from execution; that the Underlying Judgment – even if valid – had already been satisfied. At no time did Pangelinan object to the place of sale.

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10. The Order Authorizing Roy Alexander to Levy Execution directed Mr. Alexander to effect the sale "at such place, and on such date and at such time" as he fixed by Notice of Sale. *Id.* at 2.

11. Pursuant to court order, Alexander notified Pangelinan on March 21, 2006 that he could either pay the remaining balance of the Underlying Judgment with accrued interest and outstanding fees, costs, and expenses, or he could use sufficient property to satisfy the debt. *See* Demand Pursuant to 7 CMC § 4204(a); Notice of Levy on Lot No. E.A. 222 (May 15, 2006) (No. 506).

12. When Pangelinan failed to respond to Alexander, Alexander scheduled a judicial sale of Lot E.A. 222 for June 2, 2006, at Alexander's office and arranged for publication of the notices of the sale. *Id.*

13. Although he repeatedly objected to the writ of execution as improper on grounds that the court lacked personal and subject matter jurisdiction to issue the Underlying Judgment, Pangelinan never objected to the place of the sale. *See* Amended Order Granting Writ of Execution at 4-7 (Mar. 8, 2006) (No. 502).

14. One day prior to the scheduled date of sale, Pangelinan delivered a letter addressed to an editor (the "June 1 Letter") to Alexander's office. (Compl. ¶ 6.) The next day, the letter to the editor was published in the MARIANAS VARIETY. (*Id.*) Among other things, the letter announced to "the

whole world that the Court's (Munson's) judgment and (Wiseman's) orders were all void, that the sale would be void and [that the] would-be purchaser would be buying himself nothing but a lawsuit." *Id.* The June 6 Letter went on to proclaim that "he would not surrender the Papago land to any would be purchaser 'to anyone come typhoon, tsaunami, volcanic eruption or the devil himself.'" *Id.* Pangelinan further stated that "anyone coming to the land claiming it would feel his 'wrath with a vengeance." (*Id.*); see also Alexander Decl. Regarding Report on Notice of Sale (June 13, 2006) (No. 508).

15. As a result of the Letter, the auction was cancelled and rescheduled for a later date. See Report on Notice of Sale for June 2, 2006 (June 13, 2006) (No. 507).

16. Plaintiffs received a second letter intended for an editor to a Saipan newspaper on June 19, 2006. In addition to reiterating that he would not yield his property to any purchaser and that he "would breathe his wrath down on the purchaser with a vengeance," Pangelinan also stated that "[t]he whole world is informed here that I am ready to brawl with any trespasser or usurper who would come in on [this] land." This letter was also published in the MARIANAS VARIETY. *See* Order Holding John S. Pangelinan in Civil Contempt of Court (Oct. 23, 2006) (No. 582).

17. As a result of the publication of the Letter, a grand jury subsequently indicted Pangelinan on two counts of obstruction of a court order

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in violation of 18 U.S.C. § 1509, arising out of his use of threats to interfere with a court order. (*See* Compl. ¶ 10 mentioning only the one count)); *see also United States v. Pangelinan*, 2007 WL 2962354 (9th Cir. 2007) (reversing jury conviction on Count 1, but affirming conviction on Count 2).

18. The Ninth Circuit ruled that Pangelinan's June 19, 2006, letter contained language which a rational trier of fact could find expressed a threat of physical harm to person or property. *Id.*

19. On June 29, 2006, the court issued a temporary restraining order to prevent Pangelinan from again interfering with the rescheduled judicial sale. *See* Order Granting Motion for Temporary Restraining Order (June 30, 2006) (No. 538). In material part, the order required Pangelinan to "refrain immediately from impeding or interfering with the levy on and judicial sale of Lot No E.A. 222, the acquisition of the property, subsequent occupancy, transfer, quiet enjoyment, or other use." At the hearing, Pangelinan testified that he would not surrender the premises and also mentioned that "the sale would be void as the underlying civil judgment was void for lack of jurisdiction." (Compl. ¶ 13.)

20. The court converted the temporary restraining order into a permanent injunction on August 2, 2006. *See* Order Granting Motion for Permanent Injunction (Aug. 2, 2006) (No. 553).

21. Pursuant to court order, Mr. Alexander issued a revised Notice of

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Sale and appeared at the office of Alexander Realty in San Jose, Saipan on July 28, 2006 to offer the Papago Property to the highest bidder. *See* Motion to Lift Stay Order and to Confirm Sale of Lot No. E.A. 222 (Nov. 13, 2006) (No. 587).

22. Pursuant to the second notice of sale, on July 28, Alexander offered to sell at public auction all rights, title and interest in Lot EA 222. Two bids were made for the property. As the highest bidder, Mafnas's bid was accepted.

23. The sale was held at Alexander's office. Pangelinan never objected to the place of sale, but instead reiterated his standard line that the sale would be void because the Underlying Judgment was void, and the judgment was void because – the district court lacked in personam jurisdiction over Pangelinan and the subject matter. (Compl. ¶ 35.)

24. On August 14, 2006, the court stayed the sale when information came to light indicating that Pangelinan had, at the last minute, recorded deeds for the property naming his sons as the transferees. *See* Order holding Pangelinan in Civil Contempt for failing to appear; for recording a confirmation deed and quitclaim deed in violation of the restraining order (No. 582).

25. By separate order, the court declared the deeds from Pangelinan to his sons null and void. Order Declaring that Document Nos. 06-1832 and

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06-1833, at the Commonwealth Recorder's Office, are Null and Void (Nov. 13, 2006) (No. 586).

26. The court confirmed the sale of Lot no. E.A. 222 on December 16, 2002 and ordered the Pangelinans to leave the premises and property peacefully without provoking a breach of the peace or interfering with the use and quiet enjoyment of the property.

27. After securing the property, federal marshals tendered the property to Roy Alexander who, in turn, surrendered the premises to Rufo Mafnas. *See* Order Granting Motion to Confirm Sale of Lot No. E.A. 222 (Dec. 18, 2006) (No. 602).

28. On January 28, 2008, Pangelinan forwarded a letter to Rufo Mafnas in which he stated that he had credited $430.30 overpayment from the sale of the Papago Land to amounts he believed would be awarded to him in this lawsuit.

LEGAL STANDARD GOVERNING THIS MOTION

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. The question presented by a motion to dismiss is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer evidence in support of the claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L.Ed.2d 90 (1974), *overruled on other grounds by Davis v.*

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Scherer, 468 U.S. 183, 104 S.Ct. 3012 (1984).

In answering this question, the court considers whether there are sufficiently detailed factual allegations in the complaint "to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, --- U.S. ----, ----, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007). Dismissal, however, is also warranted in the absence of a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.1990).

In making this determination, the court may take judicial notice of judicial proceedings as well as documents of public record filed therein.[6/] Mr. Alexander and Mr. Mafnas seek judicial notice of certain pleadings and rulings only for matters of public record, the motion before the court remains a motion to dismiss and is not converted to a motion for summary judgment. *See Gordon v. Impulse Mktg. Group, Inc.*, 375 F.Supp.2d 1040, 1044 (E.D. Wash.2005).

Finally, even though pro se pleadings are held to a less stringent standard than those drafted by lawyers, courts in this Circuit have ruled that even pro se litigants are bound by the Federal Rules of Civil Procedure. *See,*

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[6] "On a motion to dismiss, [the court] may take judicial notice of matters ... outside the pleadings." *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.1986). The court may, accordingly, consider matters of public record, including pleadings, orders, and other papers filed with the court. *See Mack v. South Bay Beer Distributors,* 798 F.2d 1279, 1282 (9th Cir.1986) (abrogated on other grounds by *Astoria Federal Savings and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

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e.g., King v. Atiyeh, 814 F.2d 565, 567 (9th Cir 1987); *Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) ("We recognize that pro se complaints are read liberally, but they still may be frivolous if filed in the face of previous dismissals involving the exact same parties under the same legal theories.").

A. PLAINTIFF FAILS TO STATE A CLAIM FOR RETALIATORY CRIMINAL PROSECUTION

Pangelinan claims that he was indicted, arrested, prosecuted, convicted and imprisoned on account of Alexander's collaboration with the Federal Defendants when Pangelinan publicly criticized the Underlying Judgment and the Order of Sale in his June 1 Letter and for exercising his First Amendment right of free speech. Nothing could be further from the truth.

Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right." *Crawford-El v. Britton*, 523 U.S. 574, 589, n. 10, 118 S.Ct. 1584, 1592, 140 L.Ed.2d 759 (1998). Thus, the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out. *Id.* at 592, 118 S.Ct. 1584; *see also Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972) (the government may not punish a person or deprive him of a benefit on the basis of his "constitutionally protected speech").

To allege a Bivens action for retaliatory prosecution for the exercise of

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free speech rights, therefore, every plaintiff must demonstrate that he was prosecuted for engaging in constitutionally protected conduct. *E.g., Gates v. City of Dallas*, 729 F.2d 343, 346 (5th Cir. 1984). Sadly for Mr. Pangelinan, however, true threats of intimidation or physical violence fall outside the ambit of constitutional protection. *See Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 1401, 22 L.Ed.2d 664 (1969).[7] The Ninth Circuit has established an objective test for determining whether a threat is unprotected by the First Amendment. *See Lovell v. Poway Unified School Dist.,* 90 F.3d 367, 371 (9th Cir.1996)[8] Under *Lovell*, a statement is unprotected if "a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." 90 F.3d 367, 371-372 (9th Cir.1996).

In making this determination, *Lovett* dicates that "[a]lleged threats should be considered in light of their entire factual context, including the surrounding events and the reaction of the listeners." 90 F.3d at 372 (citing *United States v. Gilbert*, 884 F.2d 454, 457 (9th Cir.1989)). Therefore, if a reasonable person would agree that the threats in the June 1 Letter portended a serious intent to harm or assault, then Pangelinan's protestations that they were

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[7] 394 U.S. at 707, 89 S.Ct. 1399.

[8] *Watts* held that the statement, "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.," was political hyperbole and not a "true threat" given its context.

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protected as "free speech" are meaningless.

In the instant case, the language of the June Letter was not ambiguous; Mr. Alexander and everyone connected with the sale took Pangelinan's letter very seriously; and the Trinidad Plaintiffs turned the matter over to the authorities for further investigation. Based on the undisputed facts giving rise to this case and the ruling of the Ninth Circuit that "Pangelinan's June 19, 2006, letter contain[ed] language which a rational trier of fact could find expressed a threat of physical harm to person or property,"[9/] Pangelinan's June 1 Letter does not even approach a protected activity. The Letter, moreover, is hardly the only example of Pangelinan's harassment. Even a cursory review of the record in Civil Action No. 97-0073 reflects the tumultuous history traveled by the Trinidad Plaintiffs to collect the Underlying Judgment, a history exacerbated by Pangelinan's ongoing roadblocks to interfere with the transfer of property and threats of violence. The record is replete with orders for

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[9] *United States v. Pangelinan*, 2007 WL 2962354 (9th Cir. 2007).

sanctions,[10] to show cause,[11] contempt citations,[12] and restraining orders[13] to stop John Pangelinan from interfering with the Trinidad Plaintiffs' right to collect payment. Given Pangelinan's history of obstruction and threats he has acted upon, the intimidating tactics in the June 1 Letter stand as far from protected activity as one can get. *See Wisconsin v. Mitchell*, 508 U.S. 476, 484, 113 S. Ct. 2194, 2199, 124 L.Ed.2d 436 (1993) (noting the line between expressions of belief that are protected by the First Amendment and threats of force, which are not). Because the threats were not protected by the First Amendment, the claim for retaliatory criminal prosecution fails. *See Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir.2002) (noting that to establish a First Amendment retaliation claim, ordinary citizens not employed by government

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[10] *E.g.*, Submission of Attorney's Fees and Costs as to Rule 11 Sanctions (No. 386); Order Granting Plaintiffs' Motion for Sanctions (No. 387); Motion to Compel Attendance at Deposition and for Sanctions (No. 392); Order Granting Motion to Compel and for Sanctions (No. 411).

[11] *E.g.*, Motion for Issuance of an Order to Show Cause and for Contempt (No. 303); Supplemental Filing Re Motion for Order to Show Cause for Contempt (No. 308); Motion for Issuance of Order to Show Cause re: Contempt against Marianas Seaside Development Corp. (No. 371).

[12] *E.g.,* Order finding John S. Pangelinan in Contempt of Court (No. 428-1).

[13] *E.g.*, Ex Parte Motion for Temporary Retraining Order (No. 294-1); Motion for Temporary Restraining Order and For Preliminary and Permanent Injunction and Supporting Affidavit (Nos. 295-1 and 296-1); Temporary Restraining Order (No. 305-1); Amended Temporary Restraining Order (No. 307); Order Granting Preliminary Injunction (No. 315-4); Notice of Motion and Motion for Temporary Restraining order and Permanent Injunction with Memorandum and Declaration (Nos. 403-1, 404-1, 405-1); Motion for Ex Parte Temporary Restraining Order and Permanent Injunction (No. 415-1); Temporary Restraining Order (No. 419-1); Order Granting Motion for Permanent Injunction (No. 423-1).

must show: (1) that they were engaged in constitutionally protected activity, (2) that defendants' actions caused them to suffer an injury which would chill a person of ordinary firmness from continuing to engage in that activity, and (3) that the defendants' adverse actions were substantially motivated by plaintiffs' exercise of constitutionally protected conduct.).

B. THE CLAIM FOR RETALIATORY DENIAL OF DUE PROCESS ALSO FAILS

1. The Execution Sale was Valid

Pangelinan also challenges the validity of the judicial sale because it did not take place at the federal courthouse. (*See* Compl. at 8, citing *Yazoo & M.V.R. v. City of Clarksdale*, 257 U.S. 10, 23, 42 S. Ct. 27, 31, 66 L.Ed. 104 (1921)). He further claims that the taking and delivery of possession of his property, "a non-existent procedure in public sale," likewise renders the sale void. (Compl. at 13.) Finally, Pangelinan claims that the sale is void since it was initiated to satisfy the allegedly void Underlying Judgment. Neither of these arguments have merit.

2. The Sale Did Not Take Place at the Wrong Location

Pursuant to the Order Granting Writ of Execution, the district court ordered and authorized Roy Alexander to levy execution upon Lot E.A. 222 to satisfy the balance on the judgment, pursuant to CNMI law. *See* Order Authorizing Roy Alexander to Levy Execution (Feb. 23, 2006) (No. 492); 7

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CMC § 4204(b) and (c). Consistent with CNMI law, the Order Authorizing Execution provided that the sale of the Papago Property be made to the highest bidder, following adequate publication of the sale, "at such place, and on such date and at such time as may be fixed by Mr. Alexander in a Notice of Sale." Order Authorizing Roy Alexander to Levy Execution (No. 491). The Order authorizing Mr. Alexander to sell the property was issued in accordance with CNMI law to execute on a valid judgment;[14] there is no dispute, moreover, that the sale was public, that it took place after notice and publication, there was competitive bidding, and the property was sold to the highest bidder. Accordingly, the sale was not void.

Although Plaintiff contends that 28 U.S.C. 2001, required the sale to take place at the federal courthouse,[15] 28 U.S.C. § 2001 only applies to federal judicial sales – and not execution sales on court judgments which must follow the practice and procedure of the Commonwealth. *See Weir v. United States*,

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[14] Pangelinan's objections to the Underlying Judgment, on grounds of subject matter and personal jurisdiction, are barred by res judicata and are plainly frivolous since the district court and the Ninth Circuit have rejected Pangelinan's objections to jurisdiction numerous times. *See Trinidad v. Pangelinan*, 54 F. Appx 470 (9th Cir. 2003) (affirming district court's ruling and denying further filings in closed appeal); *Trinidad v. Pangelinan*, 32 F.Appx 357, 359 (affirming district court's exercise of jurisdiction over the case and parties); Order Granting Motion to Compel and Motion for Sanctions at 1-2 (No. 411) (April 1, 2004) (denying objections to jurisdiction); Order Holding John S. Pangelinan in Civil Contempt of Court at 7, (Oct. 23, 2006) (No. 582).

[15] Complaint at 8, citing *Yazoo & M.V.R.*, 257 U.S. at 23, 42 S.Ct. 27, 66 L.Ed. 104. Plaintiff claims that "sale at place set by statute is absolutely mandatory and if sale held at another place it is void."

339 F.2d 82, 85-86 (8th Cir. 1964) (Rule 69(a) of the Federal Rules of Civil Procedure, and not 28 U.S.C. §2001, governs sales to execute on a judgment; Rule 69(a) provides that the "process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise" and "the procedure on execution * * * shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought").[16/] Because 7 CMC § 4203 does not require an auction of property pursuant to a writ of execution to be performed at the courthouse,[17/] Pangelinan's challenge to the sale on this basis is misplaced. Even if section 2001 did apply to the sale at issue, however, holding the auction at Mr. Alexander's office would not void the sale, given the facts of this case.

On its face section 2001 plainly authorizes the court to order a sale upon such terms and conditions as it deems appropriate. *See United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir. 1968), *cert. denied*, 88 S. Ct. 2034, 391

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[16] *Accord O'Brien v. Kelly*, 597 F.Supp. 17, 19 (D. Alaska 1984) (The sale was conducted following state statutory guidelines; levy was required before the property could be sold; and the sale was to satisfy a money judgment unrelated to the property in issue. The fact that plaintiffs sought judicial confirmation as allowed by Alaska law "did not turn what would otherwise be an execution sale into a judicial sale.")

[17] *Yazoo & M.V.R.*, moreover, is distinguishable in other material respects. First, Yazoo plainly held that the statute on which Pangelinan relies only applies to judicial sales, and not to sales of execution. At issue in *Yazoo* were certain stock certificates that were to be sold pursuant to the state law of Mississippi. Unlike the law of the Commonwealth, Mississippi state law at this time required the sale to be made at the county courthouse. 257 U.S. at 17. Therefore, the sale was defective for its failure to comply with state law – and not for any defect that could not be cured under 28 U.S.C. § 2001.

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U.S. 966, 20 L.Ed.2d 878. Thus, the court's direction to Mr. Alexander – to hold the sale at his office – would not void the sale nor prevent its confirmation. *See Godchaux v. Morris*, 121 F. 482, 485 (5th Cir. 1903) ("The act does not declare that a failure to comply with these directions shall render the sale null, nor is any penalty denounced for their violation.").

In fact, in *Lansburgh v. McCormick*, 224 F. 874, 876-77 (4th Cir. 1915), the Fourth Circuit Court of Appeals addressed whether a sale held at a place other than those specified in the statute was jurisdictional. In declining to so rule, the Fourth Circuit held that the defect would not defeat the court's jurisdiction; the defect did not render the sale void; and the defendant, who had failed to object to the location of the sale in a timely manner, was estopped from later challenging it. *Id.*

Likewise in *Nevada Nickel Syndicate v. National Nickel Co.*, 103 F. 391, 399 (C.C. D. Nev. 1900), the Circuit Court refused to void a sale that had been challenged for its failure to conform strictly to the notice requirements of applicable federal and state statutes. The court held that since the notice provisions had been enacted for the benefit of the debtor, his failure to object in a timely manner to the irregularities did not render the sale void, but only voidable, and that the defect had, in any event, been cured by confirmation after due notice to the defendant. *Id.* The court also acknowledged that "[t]he order of confirmation gives the judicial sanction of the court, and when made it

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relates back to the time of sale, and cures all defects and irregularities, except those founded in want of jurisdiction or in fraud." *Id.* at 396. For these reasons, the court concluded that it had the power to confirm a sale, even when the terms of a decree may not have been strictly followed. *Id.*

Thus, even though the sale of the Papago Property took place at some location other than the federal courthouse, Mr. Alexander strictly followed the court's directive in this case. For his part, Pangelinan not only failed to object to the location of the sale, but he shows no prejudice from the sale's location. *See United States v. Grable*, 25 F.3d 298, 303 (6th Cir. 1994). Because Pangelinan received notice of the sale and had every opportunity to challenge the location of the sale before this collateral action, he should be estopped from objecting to the location of the sale for his failure to raise the purported defect before now. *Id.*

3. <u>The Sale is Not Subject to Collateral Attack</u>

More importantly, Pangelinan's effort to void the sale on the basis that it was not held at the federal courthouse has no merit, because a sale confirmed by the district court, even if erroneous, is not subject to a collateral attack. *See Grable*, 25 F.3d at 303, *Read v. Elliott*, 94 F.2d 55, 59 (4th Cir.1938); *Lansburgh,* 224 F. at 876.

B. PLAINTIFF FAILS TO STATE A CLAIM AGAINST ALEXANDER OR MAFNAS FOR RETALIATORY DENIAL OF DUE PROCESS

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To the best that Alexander and Mafnas can understand this claim, Pangelinan contends that the taking of his land via writ of execution and the delivery of the deed to Mr. Mafnas were void because they contravened federal law and unspecified federal statutes. Just because John Pangelinan "says so" does not make it so. The Papago Property was executed against to satisfy the Underlying Judgment in accordance with the procedures permitted by Fed. R. Civ. P. 69 and CNMI law. Pangelinan had multiple opportunities to participate in the process, just as he was afforded ample opportunity to satisfy the Underlying Judgment through other means. Since the Papago Property was not taken in retaliation for the exercise of his First Amendment rights but to satisfy the Underlying Judgment, there can be no claim against Messrs. Alexander and Mafnas for retaliatory denial of due process of law.

Although Pangelinan takes pains to point out that Alexander testified against him before the court and before the grand jury, that he filed a "negative statement", and delivered a deed to the Papago land to Mafnas, he makes no allegation that Alexander offered perjured testimony to obtain an indictment without probable cause or that he did anything but carry out the court's order as directed. *See* Report on Notice of Sale for June 2, 2006 (June 13, 2006) (No. 507); Compl. ¶¶ 7, 10, 13, 19.[18/] Since Pangelinan has likewise failed to

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[18] For these reasons, Alexander is also entitled either to absolute, quasi- judicial immunity. Absolute judicial immunity protects an officer of the court who lawfully

plead any participation by Mafnas beyond that of a good faith purchaser, moreover, he has failed to make even the most cursory showing of how Mafnas violated his rights or denied him due process. Accordingly, all claims against these defendants should be dismissed.

CONCLUSION

Dismissal of the Complaint is proper. Based on allegations rising to the level of the delusional or wholly incredible, Pangelinan contends Alexander and Mafnas should be punished for interfering with his First Amendment rights and for engaging in conduct that denied him due process. There are no First Amendment rights that these Defendants violated. No facts have been pled to establish interference. This case is simply about another man who will not understand the rule of law but can only comply by the force of law. However, if John Pangelinan wishes to seek the harbor of the law, he must first yield to the rule of law– but he cannot have it both ways. For the foregoing reasons, therefore, all claims against Roy E. Alexander and Rufo T. Mafnas should be dismissed with prejudice.

Respectfully submitted this 14th day of February, 2008.

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executes a valid court order. *See Coverdell v. Department of Soc. and Health Servs.*, 834 F.2d 758, 764-65 (9th Cir.1987); *see also Singh v. Magee*, 1 Fed.Appx. 713, 714 (9th Cir.2001). Furthermore, "[a]n absolute immunity [defense] defeats a suit at the outset, so long as the official's actions were within the scope of the immunity." *See Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13, 96 S.Ct. 984, 990, 47 L.Ed.2d 128 (1976).

/s/

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